

Chapter 28

MISCELLANEOUS OFFENSES AND PROVISIONS

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ARTICLE II. ADULT ARCADES AND ADULT MINI-THEATRES

DIVISION 1. GENERALLY

Sec. 28-81. Definitions.

As used in this article, the following words shall have the meanings herein ascribed, unless the context of their use clearly indicates another meaning:

Adult arcade shall mean any premises that is subject to regulation under Chapter 243 of the Local Government Code, as amended, to which members of the public or members of any club, group or association are admitted and permitted to use one or more arcade devices on the premises.

Arcade device shall mean any coin- or slug-operated or electronically or mechanically controlled machine or device that dispenses or effectuates the dispensing of entertainment, that is intended for the viewing of five or fewer persons in exchange for any payment of any consideration. Arcade device shall also mean an anthropomorphic device or object that is utilized for entertainment with one or more persons.

Adult mini-theatre shall mean any premises that is subject to regulation under Chapter 243 of the Local Government Code as amended, to which members of the public or members of any club, group or association are admitted and permitted to use one or more "mini-theatre devices."

Director shall mean the director of the department of administration and regulatory affairs and any employee(s) of the department assigned by him to perform the duties prescribed in this article.

Entertainment shall mean:

- (1) Any live exhibition, display or performance; or
- (2) Any still picture(s) or movie picture(s), whether mechanically, electrically or electronically displayed; or
- (3) Any combination of the foregoing, in which the specified anatomical areas or specified sexual activities are depicted; or
- (4) Use of an arcade device for any specified sexual activities.

Individual shall mean only a natural person.

Mini-theatre device shall mean any coin or slug-operated or electrically or electronically or mechanically controlled machine or device that dispenses or effectuates the dispensing of "entertainment," that is intended for the viewing of more than five

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persons but less than 100 persons in exchange for any payment of any consideration. The term "mini-theatre device" shall not include any conventional motion picture screen or projection area designed to be viewed in a room containing tiers or rows of seats with a viewer seating capacity of 100 or more persons.

Operator shall mean the individual who is principally in charge of the management of the adult arcade or adult mini-theatre.

Owner or *owners* shall mean the proprietor if a sole proprietorship, all general partners if a partnership, or the corporation and all officers, directors, and persons holding 50 percent or more of the outstanding shares if a corporation.

Permit shall mean a current, valid permit issued by the police chief under this article to an operator for an adult arcade or adult mini-theatre.

Premises shall mean a building; provided, that if a building has been physically divided into separate units that each have their own individual means of ingress or egress to the exterior of the building and which are offered by lease or otherwise for separate use and control, then it shall refer to each such separate unit.

Specified anatomical areas shall mean:

- (1) Less than completely and opaquely covered:
 - a. Human genitals, pubic region or pubic hair; or
 - b. Buttock; or
 - c. Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or
 - d. Any combination of the foregoing; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities shall mean:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic regions, buttock or female breast; or
- (4) Any combination thereof of the foregoing with an arcade device.

Sec. 28-82. Remedial effect.

The provisions of this article are remedial and they shall, notwithstanding any other provision of this Code, be construed to apply to all adult arcades or adult mini-theatres, both now existing and hereafter established.

Sec. 28-83. Supplemental effect.

The provisions of this article are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to an adult arcade or adult mini-theatre or to any owner or operator thereof.

Sec. 28-84. Penalty for article violations.

(a) The violation of any provision of this article, including the doing of anything which is herein prohibited or declared to be unlawful or the failure to do anything or perform any duty which is required herein, shall be punishable as provided by Section 243.010(b) of the Local Government Code. Each day that any violation shall continue shall constitute and be punishable as provided by Section 243.010(b) of the Local Government Code. Each day that any violation shall continue shall constitute and be punishable as a separate offense.

(b) The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

Sec. 28-85. Notices.

(a) Any notice required or permitted to be given by the director or any other city officer or agency under this article to any applicant, operator or owner of an adult arcade or adult mini-theatre may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, to the most current address as specified in the application for the permit, or any amendment thereof which has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail and shall be presumed to have been received on the third regular postal delivery day thereafter.

(b) It shall be unlawful for any person to remove any notice or order posted upon any adult arcade or adult mini-theatre pursuant to this article, except that a notice of a hearing under division 4 may be removed after the hearing has been conducted. It is a defense to prosecution under this subsection that the actor had the prior express consent of the director to remove the notice or order.

Secs. 28-86—28-90. Reserved.

DIVISION 2. PERMIT

Sec. 28-91. Required; posting.

(a) It shall be unlawful for any person to own, operate, manage or conduct any business in an adult arcade or adult mini-theatre unless there is a permit for the adult arcade or adult mini-theatre.

(b) It shall be unlawful for any person to own, operate, manage or conduct any business in an adult arcade or adult mini-theatre unless there is a permit for the sexually oriented business enterprise pursuant to section 28-122 of this Code and Tex. Loc. Gov't Code section 243.002.

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(c) It shall be unlawful for any person to own, operate, manage or conduct any business in an adult arcade or adult mini-theatre unless the permit is posted at the place designated therefor on the diagram submitted with or adopted in the permit application pursuant to section 28-92(c) of this Code and in such a manner that it is conspicuous to patrons of the adult arcade or adult mini-theatre.

(ed) In any prosecution under subsections (a) and (b), above of this section, it shall be presumed that there was no permit at the time of the alleged offense, unless a permit was then posted as provided in subsection (bc), above.

Sec. 28-92. Application.

(a) To obtain a permit, whether initial or renewal, the intended operator of the adult arcade or adult mini-theatre shall file an application with the director on a form prescribed by the director for that purpose. On the application, the applicant shall set forth the following information:

- (1) The full name of the intended operator, his residence street address, and mailing address (if different), and his driver's license or Texas Department of Public Safety personal identification number.
- (2) The name of the adult arcade or adult mini-theatre.
- (3) The street address and real property description of the tract or parcel of land upon which the adult arcade or adult mini-theatre will be located.
- (4) The names, residence street addresses, and mailing addresses (if different) of the owners of the adult arcade or adult mini-theatre and the type of business entity (proprietorship, partnership or corporation).
- (5) The name, mailing address and telephone number of a person who will act as the applicant's liaison with the director for purposes of the permit inspection required under section 28-93 of this Code. Such person must be available to come to the adult arcade or adult mini-theatre upon one hour's notice given between the hours of 8:00 a.m. and 4:00 p.m., on Monday through Friday (holidays excepted), upon request by the director to the telephone number designated during the time that the license application is pending hereunder and must be authorized to act for the applicant in matters relating to the inspection of the premises during the time that the license application is pending hereunder.

- (b) The application shall contain the following statement:

"I represent that I have personal knowledge of all statements made in this application and all information furnished herewith and that all of the same is true and correct."

(c) The application shall be accompanied by a diagram of the adult arcade or adult mini-theatre showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the adult arcade or adult mini-theatre in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. Such diagram shall also designate the place at which the permit will be posted pursuant to section 28-91(b) of this Code, if granted. A professionally prepared diagram

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in the nature of an engineer's or architect's blueprint shall not be required; however each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the adult arcade or adult mini-theatre to an accuracy of plus or minus six inches. The director shall waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the adult arcade or adult mini-theatre has not been altered since it was prepared.

(d) The application shall be sworn to be true and correct by the applicant.

(e) The application shall not be complete unless it is accompanied by the nonrefundable adult arcade or adult mini-theatre permit fee stated for this provision in the city fee schedule.

(f) Applications and other notices required or permitted to be given to the director under this article must be submitted by hand delivery by the intended operator to the office of the director, during regular working hours 8:00 a.m. to 4:00 p.m., Monday through Friday (city holidays excepted).

(g) A separate permit shall be required for each adult arcade or adult mini-theatre, and a permit shall only be valid for the adult arcade or adult mini-theatre described in the application.

(h) Where a premises is so configured and operated as to constitute both an adult arcade and an adult mini-theatre, then the operator may apply for and obtain a combined permit authorizing operation as both an adult arcade and an adult mini-theatre.

Sec. 28-93. Issuance or denial by director.

(a) The director shall complete the actions required in this section resulting in the giving of his notice of the issuance or denial of the permit by the twentieth day next following the date of his receipt of a completed application. The foregoing time period may be extended to the thirtieth day by the director upon notice to the applicant that the director has been unable, after diligent effort, to schedule the conduct of any required inspections of the adult arcade or adult mini-theatre with the liaison person designated therefor in the application by the nineteenth day next following the date of his receipt of the application. The time period may also be extended to a date mutually agreeable to the director and the applicant or his inspection liaison person if the applicant or liaison person has requested that any inspection or reinspection be delayed for the applicant's convenience. Any extensions and the basis therefor shall be documented in the director's file regarding the application.

(b) The director shall grant the permit unless:

- (1) After a permit issuance inspection of the adult arcade or adult mini-theatre (or reinspection, if duly requested) it is found that the adult arcade or adult mini-theatre does not comply with the view or lighting requirements of division 3 of this article;
- (2) The director is unable to schedule and conduct a permit issuance inspection of the adult arcade or adult mini-theatre by contacting the liaison person at the telephone number designated in the application; or

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- (3) The operator has had a permit revoked for the same adult arcade or adult mini-theatre within the 180-day period next preceding the date that the application was filed.

(c) No fee shall be imposed for the initial inspection of the adult arcade or adult mini-theatre, unless subject to the additional special inspection fee provided below. A reinspection to verify the correction of deficiencies noted on a previous inspection shall only be made upon written request of the applicant or his designated liaison person and prior payment of the nonrefundable reinspection fee stated for this provision in the city fee schedule. Inspections at an applicant's specially requested time or outside the regular working hours of 8:00 a.m. to 4:00 p.m., on Monday through Friday, whether on an initial or reinspection basis, will be subject to prior payment of the nonrefundable and additional special inspection fee stated for this provision in the city fee schedule, per inspection.

(d) Permits that are awarded shall be furnished to the operator. If a permit is denied, then a notice thereof setting forth the specific reason(s) therefor shall be given to the applicant and the owners. Permits and notices of denial may be given as provided in section 28-85 of this Code.

(e) Failure of the director to give timely notice of his action on an application within the limitation of time specified in subsection (a) or any extension authorized pursuant thereto shall entitle the applicant to the issuance of a temporary permit upon written demand therefor filed by the applicant with the director. Such a temporary permit shall only be valid until the third regular postal delivery day after the director gives notice of his action on the application pursuant to subsection (d), above.

(f) Computation of time periods under this article shall be as provided in section 1-2 of this Code.

(g) The fees prescribed in this article shall only be payable by cash, certified check, cashier's check or money order. If payment thereon is not honored, the director may suspend the permit, if issued, until payment is made by written notice to the operator.

Sec. 28-94. Term.

Each permit shall be valid for a period of one year and shall expire on the anniversary of its date of issuance, unless sooner revoked, or surrendered. Each permit shall be subject to renewal as of its expiration date by the filing of a renewal application with the director. Renewal applications must be filed at least 20 days prior to the expiration date of the permit that is to be renewed and shall be accompanied by the fee stated for this provision in the city fee schedule.

Sec. 28-95. Transfer upon change.

- (a) A permit shall expire on the tenth day next following any of the following events:

- (1) A change of the mailing address of the operator or owners of the adult arcade or adult mini-theatre; or
- (2) Any change of the operator or owners of the adult arcade or adult mini-theatre;

unless the operator has obtained a permit transfer/amendment for such changes.

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(b) The director shall prescribe a form on which permit transfer/amendment applications must be made and it shall include a statement under oath that:

"The original application remains correct as originally submitted and previously amended in all respects except those which are amended hereby."

The transfer/amendment application shall be sworn to be true and correct by the operator and shall not be complete unless accompanied by the nonrefundable transfer/amendment fee stated for this provision in the city fee schedule. The director shall cause the amendment or transfer to be issued upon the receipt of a completed application. Applications shall be filed in the manner specified in section 28-92(f) of this Code.

(c) Any change in the information specified in subsection 28-92(a) of this Code or any change in the identity or telephone number of the person designated as the inspection liaison or in the plans for the adult arcade or adult mini-theatre as related to a permit application which is pending issuance under section 28-93 of this Code shall be reported in the same manner to the director without delay and shall be accompanied by the same fee as specified in subsection (b) of this section. The filing of an amendment to an application which is pending issuance shall have the effect of causing all time periods set forth in section 28-93(a) of this Code to recommence as of the date the director receives the amendment.

Sec. 28-96. Alteration of adult arcade or adult mini-theatre.

A permit shall only extend to the adult arcade or adult mini-theatre in the configuration described in the application and the plans submitted with or adopted therein. If an adult arcade or adult mini-theatre remains open during alterations or expansions, then it shall be the duty of the operator to ensure that no patron is permitted to use arcade devices or mini-theatre devices situated within any portion of the adult arcade or adult mini-theatre which has been altered or added by any alteration or expansion of the adult arcade or adult mini-theatre until a new permit has been obtained on the basis of the adult arcade or adult mini-theatre as reconfigured by the work.

Sec. 28-97. Persons on duty during operation.

It shall be the duty of the owners and operator of each adult arcade or adult mini-theatre to ensure that at least one person who is charged with the responsibility for the operation of the adult arcade or adult mini-theatre is on duty at the adult arcade or adult mini-theatre and situated in each manager's station designated pursuant to section 28-92(c) of this Code at all times that any patron is present in the adult arcade or adult mini-theatre.

Sec. 28-98. Conduct in adult arcades or adult mini-theatres.

It shall be unlawful for the owners or operator and it shall also be unlawful for any agent or employee present in an adult arcade or adult mini-theatre to knowingly allow or permit any act of sexual intercourse, sodomy, oral copulation, indecent exposure, lewd conduct or masturbation with or without an individual or an arcade device to occur in the adult arcade or adult mini-theatre or to knowingly allow or permit the adult arcade or adult mini-theatre to be used as a place in which solicitation for sexual intercourse, sodomy or oral copulation occur.

Sec. 28-99. Appeals.

(a) Any applicant, operator or owner who is aggrieved by any decision of the director relating to his duties and authority under this division in the issuance of permits shall be entitled to a hearing to be conducted in the same manner specified in division 4 of this article for permit revocations, except that the grounds considered in the hearing shall be as applicable under this article; provided, that a written notice of the request for the hearing setting forth the grounds must be received by the director within 15 days from the date that notice of the action complained of is given to the hearing applicant. The applicant, owner or operator shall be entitled to three days' notice of the date, time and place of the hearing.

(b) Upon receipt of an appeal, the director shall refer the matter to the hearing officer for scheduling. If it will not be possible to hear and resolve the appeal within ten days after the date it was received by the director, then the director shall issue a temporary permit until the matter can be heard.

Sec. 28-100.—~~Reserved~~ Authority to file suit.

The city attorney is hereby authorized to file suit to enjoin the violation of this article.

DIVISION 3. ADULT ARCADE OR ADULT MINI-THEATRE DESIGN

Sec. 28-101. View from manager's station.

(a) If an adult arcade or adult mini-theatre has one (1) manager's station designated pursuant to section 28-92(c) of this Code, then the interior of the adult arcade or adult mini-theatre shall be configured in such a manner that there is an unobstructed view of every area of the adult arcade or adult mini-theatre to which any patron is permitted access for any purpose from that manager's station. If an adult arcade or adult mini-theatre has two or more manager's stations designated pursuant to section 28-92(c) of this Code, then the interior of the adult arcade or adult mini-theatre shall be configured in such a manner that there is an unobstructed view of each area of the adult arcade or adult mini-theatre to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(b) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in an adult arcade or adult mini-theatre, to ensure that the view area specified in subsection (a) remains unobstructed by any merchandise, display racks or other materials at all times that any patron is present in the adult arcade or adult mini-theatre and to ensure that no patron is permitted access to any area of the adult arcade or adult mini-theatre which has been designated as an area in which patrons will not be permitted in the plan filed pursuant to section 28-92(c) of this Code.

Sec. 28-102. Wall penetrations.

(a) In addition to any other requirements of this article, no adult arcade or adult mini-theatre shall be configured in such a manner as to have any opening in any partition, screen, wall or other barrier that separates viewing areas for arcade devices or adult mini-theatre devices from other viewing areas for arcade devices or adult mini-theatre devices. This provision shall not apply to conduits for plumbing, heating, air conditioning, ventilation or electrical service, provided that such conduits shall be so screened or otherwise configured as to prevent their use as openings

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that would permit any portion of a human body to penetrate the wall or barrier separating viewing areas.

(b) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in an adult arcade or adult mini-theatre to ensure that the premises is monitored to assure that no openings are allowed to exist in violation of subsection (a), above, and to ensure that no patron is allowed access to any portion of the premises where any opening exists in violation of subsection (a), above, until the opening has been repaired.

Sec. 28-103. Lighting.

(a) Each adult arcade or adult mini-theatre shall be equipped with lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) footcandle as measured at four feet above the floor level.

(b) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in an adult arcade to ensure that the illumination described in subsection (a), above, is maintained at all times that any patron is present in the adult arcade or adult mini-theatre.

Secs. 28-104—28-110. Reserved.

DIVISION 4. PERMIT REVOCATION

Sec. 28-111. Grounds.

(a) A permit for an adult arcade or adult mini-theatre may be revoked as provided in this division after a hearing conducted by a hearing officer appointed by the mayor and confirmed by the city council under the provisions of section 28-125(d) of this Code, if the hearing officer finds from a preponderance of the evidence adduced at such hearing that:

- (1) The configuration or lighting equipment of the adult arcade or adult mini-theatre has been changed so that it is no longer in compliance with the view area, lighting or wall penetration requirements of division 3 of this article; or
- (2) That a cumulative total of four or more violations of any of sections 28-97, 28-98, 28-101(b), 28-102(b) or 28-103(b) has occurred within the adult arcade or adult mini-theatre in a consecutive period of six (6) months; or
- (3) That the operator of the adult arcade or adult mini-theatre has knowingly allowed or permitted any act of sexual intercourse, sodomy, oral copulation, indecent exposure, lewd conduct or masturbation with or without an individual or an arcade device to occur in the adult arcade or adult mini-theatre or has knowingly allowed or permitted the adult arcade or adult mini-theatre to be used as a place in which solicitation for sexual intercourse, sodomy, or oral copulation occur. Knowledge of such activities shall be presumed, subject to rebuttal by the operator, in any instance where there have been convictions in a court of original jurisdiction for four or more offenses arising on separate occasions in the adult arcade or adult mini-theatre and relating to the above activities within a continuous period of one year. The appeal of a conviction shall not prevent its consideration, unless and

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until it is reversed or set aside, and a disposition by deferred adjudication shall be considered in the same manner as a conviction.

(b) The director shall not request a hearing by the hearing officer on any alleged grounds for revocation until he has caused an investigation to be made thereupon and determined that grounds for revocation may, in probability of fact, exist.

Sec. 28-112. Notice of hearing.

(a) At least 14 days prior to the date set for the revocation hearing by the hearing officer, the operator of the adult arcade or adult mini-theatre shall be given a written notice by the director which shall set forth:

- (1) The grounds upon which the director will seek revocation of the permit;
- (2) That a hearing has been scheduled thereon before the hearing officer and the time, date and place of the hearing; and
- (3) That the operator and owners may appear, may be represented by counsel, may present evidence and may cross examine witnesses presented by the director.

(b) The foregoing notices shall be given as provided in section 28-85 of this Code. Additionally, a copy thereof shall be posted at each public entrance to the adult arcade or adult mini-theatre upon the door and the notice shall also be published in a newspaper of general circulation within the City, both to be done one time at least ten days prior to the date of the hearing.

Sec. 28-113. The hearing officer.

The hearing officer shall be an official appointed by the mayor and confirmed by the city council, and hearings shall be conducted as provided in section 28-125(d) of this Code. Only evidence presented at the hearing may be considered and the burden of proof shall be on the director.

Sec. 28-114. Order of the hearing officer.

The hearing officer shall announce his decision by written order. If, after the hearing, the hearing officer finds that the permit should be revoked, he shall issue a written order revoking such permit. If the hearing officer determines, based upon the nature of the violation, that the ends of justice would be served by a suspension in lieu of a revocation, he may suspend the operation of the permit for a period of time to be stated in the order of suspension, not to exceed two months. Notice of the decision shall be given to the operator, owners, and any other persons appearing at the hearing and claiming an interest in the adult arcade or adult mini-theatre by providing each a copy of the order in the manner specified in section 28-85 of this Code.

Sec. 28-115. Posting, removal of permit, discontinuation of use as adult arcade or adult mini-theatre.

(a) If the permit is revoked or suspended, the director shall also post a copy of the order at each public entrance of the adult arcade or adult mini-theatre upon the door and shall remove the permit from the adult arcade or adult mini-theatre.

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(b) It shall be unlawful for the operator, any owner or any agent or employee of the operator or any other person upon the adult arcade or adult mini-theatre to refuse to surrender the permit after notice that it has been suspended or revoked.

Sec. 28-116. Judicial review.

The procedures set forth under section 28-135 of this Code shall apply to denials, suspensions and revocations of permits for adult arcades and adult mini-theatres under this article.

Secs. 28-117—28-120. Reserved.